

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

PREAMBLE

- 1. Sections Affected**

R17-1-306	Repeal
R17-1-308	Repeal
R17-1-309	Repeal
R17-1-317	Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-5618
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 1010, March 21, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: George R. Pavia, Department Rules Supervisor
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-8446
Fax: (602) 241-1624
E-mail: gpavia@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.
- 5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**

The agency is repealing these obsolete Sections. In a separate rulemaking, the agency will create replacement Sections in a new Chapter, 8, that will contain all future tax rules.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency will not rely on any study for this rulemaking.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

Notices of Proposed Rulemaking

8. The preliminary summary of the economic, small business, and consumer impact:

Exempt under A.R.S. § 41-1055(D)(3)

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

An interested person may communicate concerning the exemption from the economic impact statement with the agency official listed in item #4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled for the rulemaking. A request for an oral proceeding on the repeal action may be made to the agency official listed in item #4. If no oral proceeding is requested, the public record for this rulemaking will close at 4:30 p.m. on Friday May 9, 2003.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION

ADMINISTRATION

ARTICLE 3. TAXES

Section

- R17-1-306. ~~Motor Vehicle Fuel—Distributor Reports~~ Repealed
R17-1-308. ~~Motor Vehicle Fuel—Distributor Exports~~ Repealed
R17-1-309. ~~Motor Vehicle Fuel—Distributor Reports of Sales by Counties~~ Repealed
R17-1-317. ~~Motor Vehicle Fuel—Importation Reports~~ Repealed

ARTICLE 3. TAXES

R17-1-306. ~~Motor Vehicle Fuel—Distributor Reports~~ Repealed

A. ~~That all distributors of motor vehicle fuel shall, in addition to the information now required of them as such, furnish to the Motor Vehicle Division of the Arizona Highway Department at the time of making their regular monthly report to the said Motor Vehicle Division, the following information:~~

- ~~1. Motor vehicle fuel on hand at first of month.~~
- ~~2. Motor vehicle fuel acquired during month (sources itemized).~~
- ~~3. Total sales during month.~~
- ~~4. Total taxable sales during month.~~
- ~~5. Sales to United States Government during month.~~
- ~~6. Export sales during month (sources itemized).~~
- ~~7. Motor vehicle fuel on hand end of month.~~

B. ~~That sale of motor vehicle fuel to the Federal Government during the month must be supported by affidavit in the case of charge sales, and by submittal of U.S. Form 44 in the case of sales other than charge sales.~~

C. ~~That the form on which the information hereby required is furnished and the form of affidavit to be used in supporting charge sales to the United States Government shall be prescribed by the Motor Vehicle Superintendent, and shall be furnished by him.~~

R17-1-308. ~~Motor Vehicle Fuel—Distributor Exports~~ Repealed

~~Each distributor shall, upon forms furnished by the Motor Vehicle Division and designated as "Motor Vehicle Fuel Export Declaration", declare the number of gallons of motor vehicle fuel being exported by him. Such forms shall be made in triplicate and shall show the number of gallons of motor vehicle fuel exported by the distributor, the capacity of the container in which such fuel is exported, the actual content of such container, the number of gallons of such fuel found in the container on return of said distributor to the state of Arizona, the net number of gallons exported by such distributor, the invoice number and amount of gallons of motor vehicle fuel sold or disposed of by such distributor in the foreign state or country to which such fuel was exported, and shall be signed by the operator of the equipment in which such motor vehicle fuel is exported and a member of the Arizona State Highway Patrol, and indicate the date and the hour of export and date and hour of the return of~~

Notices of Proposed Rulemaking

said distributor to the state of Arizona. The original and triplicate copy of such forms shall be retained by the operator and the duplicate to be surrendered to a member of the Arizona State Highway Patrol or an agent of the Motor Vehicle Division, and when a distributor makes a claim for refund based on motor vehicle fuel exported, the original of said "Motor Vehicle Fuel Export Declaration", properly dated, signed and executed, shall accompany such claim.

R17-1-309. Motor Vehicle Fuel—Distributor Reports of Sales by Counties Repealed

- A.** Each county in the state of Arizona participates in motor vehicle fuel taxes in the proportion that sales in such county bear to the total sales throughout the state.
- B.** The statutes require that the county in which a sale is completed by a distributor (county in which delivery is made, irrespective of the source of supply) shall be credited with the sale.
- C.** It is essential that the accounting office of the distributor and the Motor Vehicle Division shall definitely know the county in which a delivery is made by a distributor.
- D.** On and after November 1, 1936, each distributor's invoice and duplicates covering a sale of motor vehicle fuel in this state shall designate the name of the county in which such fuel is delivered by the distributor. Such designation shall be made at the time the invoice is prepared by writing or stamping the name of the county in a conspicuous place on the invoice and duplicates, preferably following the name or address of the purchaser.

R17-1-317. Motor Vehicle Fuel—Importation Reports Repealed

- A.** Section 1686, Revised Code of the state of Arizona, as amended, defines motor vehicle fuel as follows: "Motor vehicle fuel shall mean and include any inflammable liquid, by whatsoever name such liquid may be known or sold, which is used or usable in motor vehicles, either alone or when mixed, blended or compounded, for the propulsion thereof upon the public highways . . ."
- B.** Certain liquid petroleum products having an A.P.I. gravity greater than 24 at 60° F, such as diesel oil, stove oil, etc., not now classed as motor vehicle fuel, are being used to propel motor vehicles over the highways of this state and for mixing, blending or compounding motor vehicle fuel.
- C.** Each person who delivers such products into the fuel tanks of motor vehicles, or who uses such products in mixing, blending or compounding motor vehicle fuels, is required to pay to the state of Arizona the five-cent per gallon motor vehicle fuel tax on such fuel so used.
- D.** It is necessary that the Vehicle Superintendent know the sources of supply in this state of such products when used as motor vehicle fuel in order to ascertain that the tax has been paid to the state.
- E.** Each distributor and each person shall, upon receipt of any interstate shipment of liquid petroleum products having an A.P.I. gravity greater than 24 at 60° F, which might be classed as motor vehicle fuel, immediately report the receipt of such shipment to the Vehicle Superintendent in the manner prescribed in sections 1673c and 1674c, R.C.A., as amended by Chapter 70, Legislature of 1935, regular session, for immediately reporting receipt of interstate shipments of motor vehicle fuel.
- F.** Each person transporting such products from a point without this state to a point within this state by means of any vehicle operated over the highways of this state shall immediately report such shipment to the Vehicle Superintendent in the manner prescribed in Section 1675, R.C.A., as amended by Chapter 70, Legislature of 1935, regular session, for immediately reporting such shipments of motor vehicle fuel.
- G.** Every railroad company transporting such products from a point without this state to a point within this state shall report such shipment to the Vehicle Superintendent on or before the 25th of the next succeeding month, in the manner as shipments of motor vehicle fuel are reported.
- H.** Forms 70-3307 "Motor Vehicle Fuel Shipments to Arizona" shall be used for the above mentioned reports in the same manner as prescribed for their use in reporting shipments of motor vehicle fuel.
- I.** Penalties prescribed by the statutes for noncompliance with respect to reporting shipments of motor vehicle fuel shall likewise apply for noncompliance with respect to reporting shipments of liquid petroleum products as above mentioned.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 8. DEPARTMENT OF TRANSPORTATION
TAXES**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Chapter 8 | New Chapter |
| Article 3 | New Article |
| R17-8-301 | New Section |
| R17-8-302 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366
Implementing statutes: A.R.S. §§ 28-5618
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 1010, March 21, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: George R. Pavia, Department Rules Supervisor

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-8446

Fax: (602) 241-1624

E-mail: gpavia@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.
- 5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**

There have been many changes to the agency's supplier report forms throughout the years. These Sections define terms and provide updated information and direction to a current or potential motor fuel supplier for routine monthly reporting requirements to the Division.

In a separate rulemaking, the agency is repealing obsolete Sections in 17 A.A.C. 1, Article 3. This rulemaking will create replacement Sections in a new Chapter, 8, that will contain all future tax rules.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency is not relying on any study for this rulemaking.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The only perceived economic impact of these Sections is minimal administrative costs for a motor fuel supplier required to complete the monthly reporting process required under A.R.S. § 28-5618. The benefit to both the agency and supplier is accurate assessment of fuel taxes required under A.R.S. Title 28, Chapter 16, Article 1. Non-supplier businesses and private consumers assume a minimal amount of supplier tax costs as standard practice in motor fuel sales pricing.

Notices of Proposed Rulemaking

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

An interested person may communicate with the agency official listed in item #4 concerning the economic impact statement.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled for this rulemaking. A request for an oral proceeding may be made to the agency official listed in item #4. If no oral proceeding is requested, the public record for this rulemaking will close at 4:30 p.m. on Friday May 9, 2003.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 8. ~~RESERVED~~ DEPARTMENT OF TRANSPORTATION

TAXES

ARTICLE 3. REPORTING REQUIREMENTS

Section

R17-8-301. Definitions

R17-8-302. Fuel Supplier Reporting Requirements

ARTICLE 3. REPORTING REQUIREMENTS

R17-8-301. Definitions

The following definitions apply to this Article unless otherwise indicated:

1. "At-the-rack" means the point where motor vehicle fuel leaves a bulk storage system and passes through a mechanism used to dispense the product from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transportation.
2. "Below-the-rack" means any transaction that occurs after motor vehicle fuel is dispensed at-the-rack.
3. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
4. "Supplier" has the meaning prescribed under A.R.S. § 28-5601(30).

R17-8-302. Fuel Supplier Reporting Requirements

A. A fuel supplier in Arizona shall meet monthly reporting requirements under A.R.S. § 28-5618 or § 28-5732 by completing the Division-provided report form #120 as described under subsection (B).

B. A monthly supplier report form #120 shall contain separate schedules requiring specific information disclosure that includes:

1. A summary schedule of all receipts, dispositions, taxes, fees, penalties, and interest for:
 - a. Aviation fuel;
 - b. Motor vehicle fuel; or
 - c. Use fuel;
2. A schedule of detailed acquisitions by pipeline or other means;
3. A per-load schedule of tax-due fuel acquisitions by truck or rail;
4. A per-load schedule of tax-paid fuel acquisitions by truck or rail;
5. A per-load schedule of fuel acquisitions for the Navajo Nation reservation;
6. A schedule of at-the-rack fuel blending;
7. A schedule of below-the-rack fuel blending;
8. A schedule of two-party exchanges;
9. A per-load disposition schedule of tax-paid gallons;
10. A per-load disposition schedule of tax-due gallons;
11. A per-load disposition schedule of fuel to the Navajo Nation reservation;
12. A per-load disposition schedule of non-taxable dyed diesel for purposes of A.R.S. § 28-5716(A)(7);
13. A per-load disposition schedule of motor fuel sales by Arizona county for purposes of A.R.S. § 28-5618(A)(2);

Notices of Proposed Rulemaking

- 14. A collection allowance worksheet;
- 15. A bad debt allowance worksheet;
- 16. A schedule of supplier inventory; and
- 17. Other information as required by the Division.

C. The supplier shall sign the summary schedule described under subsection (B)(1) certifying that all documentation submitted to the Division is correct and complete.

D. The supplier shall submit a completed monthly report form #120 to:

Motor Vehicle Division

Supplier Reporting Unit

P.O. Box 77

1801 W. Jefferson, Mail Drop 519M

Phoenix, AZ 85007-3230

Fax: (602) 712-3230

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-1401
R20-4-1402
R20-4-1403
R20-4-1405

Rulemaking Action

Amend
Repeal
Amend
Amend

2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-123.01 and 6-124

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2057, May 3, 2002

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John P. Hudock
Address: State Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

5. An explanation of the rule, including the agency's reasons for initiating the rule:

In a five-year rule review report approved by the Council on November 7, 2000, the Department promised to overhaul each Section of Article 14 to modernize the writing style, repeal dated language and statutory references, and bring the Sections up to modern rulewriting standards. The Department conducts this rulemaking to fulfill that promise.

In particular, the revision of the definitions in R20-4-1401 clarifies those provisions and puts them into modern plain English. The repeal of the definition of "formal interview" shortens this Section by removing a term that is no longer used in Article 14.

The repeal of R20-4-1402 removes a superfluous Section. The intended legal effect of this Section is preserved by language added to R20-4-1403.

R20-4-1403 is amended to allow service of a subpoena by facsimile transmission, to clarify its meaning, and to put it in modern plain English.

R20-4-1405 is amended to clarify its meaning and to put it in modern plain English.

Notices of Proposed Rulemaking

- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department has not reviewed, and does not propose to rely on, any study as an evaluator or justification for the proposed rule.

- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

A. The Banking Department

The Department will incur the costs of completing this rulemaking and of putting the revised Sections into effect. It expects to receive the offsetting benefits of a more modern set of rules that accurately describe the Department's current best practices and a resultant ease of communication with all licensees.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree; nor should these revisions increase any licensee's cost of doing business in compliance with these rules.

D. Consumers

The Department does not expect a measurable effect on consumers.

E. Private and Public Employment

The Department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: John P. Hudock
Address: State Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceeding is scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the Department personnel listed in items #4 and #9. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item #9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

- 12. Incorporations by reference and their location in the rules:**

There is no material incorporated by reference in these rules.

- 13. The full text of the rules follows:**

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 14. INVESTIGATIONS

Section

R20-4-1401. Definitions

R20-4-1402. ~~Exercise of Other Powers Repealed~~

R20-4-1403. Subpoenas; Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power

R20-4-1405. Fingerprints; Background Information

ARTICLE 14. INVESTIGATIONS

R20-4-1401. Definitions

In this Article, unless the context otherwise requires:

1. "Examination" means ~~a reviewing review of an applicant's or licensee's the operations, books, and records of a licensee, or an applicant for a license or permit from the Superintendent for any lawful purpose, including, among other things, those one or more of the purposes listed set forth in A.R.S. § 6-124(A).~~
2. "Formal interview" means ~~the examination under oath of an individual compelled or requested to testify.~~
- 3-2. "Investigation" means an inquiry, other than an examination, ~~into the affairs of a licensed or unlicensed entity including a review of the entity's operations, books, and records, conducted by the Superintendent for any lawful purpose, including those one or more of the purposes listed set forth in A.R.S. § 6-124(A).~~
- 4-3. "Licensee" means a financial institution or enterprise.

R20-4-1402. ~~Exercise of Other Powers Repealed~~

~~The Superintendent may, at any time, exercise any other power or authority provided by statute or rule without regard to whether an investigation has been commenced or completed, and conducting an investigation shall not be a prerequisite to any such exercise of powers by the Superintendent.~~

R20-4-1403. Subpoenas; Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power

~~The Superintendent may serve a subpoena Subpoenas issued in investigations may be served either by personal delivery or by first class, certified, or express mail, or by facsimile transmission. A as in civil actions or may be served by an Department employee, of the Department or an any attorney or agent of the Attorney General's office, may accomplish service for the Superintendent or may be mailed by certified mail to the person to be served. The Superintendent may amend a subpoena Subpoenas may be amended at any time, and may serve the amended subpoena may be served as provided in this Section herein. Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Superintendent may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress. Nothing in this rule shall be construed to limit the authority of the Superintendent to compel testimony or the production of documents to only those cases in which an investigation has been commenced.~~

R20-4-1405. Fingerprints; Background Information

- A. In connection with ~~an examination or any~~ investigation, the Superintendent may investigate the following persons' background ~~of any of the following~~:
1. An applicant or a licensee, or a person whom the Superintendent reasonably believes may be violating any statute or rule provision of the laws and rules administered by the Superintendent; and
 2. ~~An Any~~ officer, director, agent, employee, ~~or partner of, and any~~ joint venturer, ~~or~~ affiliate, or other person associated with; a person described in subsection (A)(1) paragraph (1), if ~~the such~~ other person has or had any involvement in or control over the activities of the person described in subsection (A)(1) paragraph (1).
- B. ~~In connection with As part of an examination or investigation, the Superintendent may require a person described in A.R.S. § 6-123.01(A) or (E) to submit the submission of a statement of personal history and fingerprints to the Department from any of the persons described in subsection (A).~~